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*Attorneys for Defendants  
Toshiba Corporation and  
Toshiba America Information Systems*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

INNOVUS PRIME LLC,

Plaintiff,

v.

TOSHIBA CORP. AND TOSHIBA  
AMERICA INFORMATION SYSTEMS,  
INC,

Defendants.

CASE NO. 12-cv-00659-WHO

**STIPULATION AND ORDER  
EXTENDING THE DATE FOR SERVICE  
OF INVALIDITY CONTENTIONS AND  
CLAIM CONSTRUCTION**

Judge: Hon. William H. Orrick

Pursuant to Civil Local Rules 6-2 and 7-12, Defendants Toshiba Corporation and Toshiba America Information Systems, Inc. (“Toshiba”) and Plaintiff Innovus Prime LLC (“Innovus”) (collectively “the Parties”), hereby stipulate to and request an order extending the due date for Toshiba to serve its invalidity contentions in this matter, and also stipulate to and request an extension of claim construction deadlines. This is the second request for a modification of time for service of invalidity contentions. Schuettenhelm Decl. at ¶ 3. On March 12, 2013, the Parties stipulated to an extension of the date for service of invalidity contentions until after the

1 Court decided Toshiba's First Motion to Strike Innovus's Infringement Contentions. *Id.* at ¶ 4.

2 On May 10, 2013, the Court granted Toshiba's Motion to Strike Innovus's First Amended  
3 Infringement Contentions, and ordered Innovus to serve another set of amended infringement  
4 contentions. *Id.* at ¶ 5. The Court also ordered Toshiba to serve its invalidity contentions and  
5 accompanying production "45 days after receipt of Innovus's amended infringement  
6 contentions." *Id.* ¶ 6. Pursuant to the Court's Order, Toshiba's invalidity contentions are  
7 presently due on August 5, 2013. *Id.* at ¶ 8.

8 Toshiba is now preparing to file a Motion to Strike Innovus's Supplemental Amended  
9 Infringement Contentions ("Second Motion to Strike"). *Id.* at ¶ 9. Under the Patent Local Rules,  
10 service of invalidity contentions is predicated on the service of infringement contentions, (Patent  
11 Local Rule 3-3), and, as discussed in Toshiba's Original Motion to Strike, courts in this district  
12 generally stay defendant's discovery obligations, including service of invalidity contentions,  
13 until issues regarding the sufficiency of infringement contentions are resolved. Dkt. No. 33 at  
14 18. Thus, Toshiba's Second Motion to Strike will request that discovery be stayed until the  
15 Motion is resolved. Schuettenhelm Decl. at ¶ 10.

16 However, pursuant to Civil Local Rule 7-2, a hearing on the Second Motion to Strike  
17 cannot be scheduled until after the August 5, 2013, due date for filing invalidity contentions. *Id.*  
18 at ¶ 11. As a result, the presently requested modification will provide time for the Parties to  
19 complete the briefing on Toshiba's Second Motion to Strike, as well as for the Court to render its  
20 decision on the Second Motion to Strike. *Id.* at ¶ 12. Absent an extension, Toshiba will be  
21 placed in the position of having to provide its invalidity contentions before the hearing on the  
22 sufficiency of Innovus's infringement contentions. *Id.*

23 In addition, the current schedule for this case provides deadlines for claim construction  
24 activities predicated on the service of infringement contentions and invalidity contentions. *See*  
25 Patent Local Rules 4-1 – 4-5. Accordingly, the parties further request that the Court extend the  
26 claim construction deadlines based on the outcome of Toshiba's Second Motion to Strike. The  
27 presently requested extension will provide time for the Court to render its decision on Toshiba's  
28

1 Second Motion to Strike, which Toshiba believes should be dispositive of the case, and will  
 2 allow the parties to align the claim construction deadlines with the requirements of the Patent  
 3 Local Rules. Schuettenhelm Decl. at ¶ 13. Absent an extension, the parties will be placed in the  
 4 position of having claim construction occur before invalidity contentions are served, contrary to  
 5 the Patent Local Rules. *Id.*

6 Accordingly, it is hereby stipulated and agreed to extend the deadlines for invalidity  
 7 contentions and claim construction pending resolution of Toshiba's Second Motion to Strike.  
 8 The parties also agree that the claim construction deadlines shall be extended based on the date  
 9 that Toshiba's invalidity contentions are due pursuant to the Patent Local Rules.

11 DATED: July 22, 2013

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 and Toshiba America Information Systems, Inc.

1 DATED: July 22, 2013

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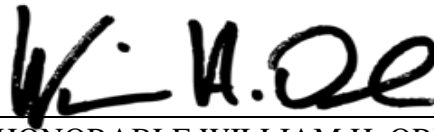
10 Filer's Attestation of Concurrence by Signatory

11 I, Paul T. Meiklejohn, counsel for Toshiba Corporation and Toshiba America Information  
12 Systems, Inc., hereby attest that I have obtained the concurrence of John W. Carpenter in the  
13 filing of this document.

14 /s/ Paul T. Meiklejohn  
15 PAUL T. MEIKLEJOHN  
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1           **PURSUANT TO STIPULATION IT IS ORDERED THAT** the August 5, 2013, due  
2 date for service of Toshiba's invalidity contentions is hereby extended pending the resolution of  
3 Toshiba's Motion to Strike Plaintiff's Supplemental Infringement Contentions. The Court  
4 further extends the claim construction deadlines pending resolution of Toshiba's Motion to  
5 Strike Plaintiff's Supplemental Infringement Contentions. The claim construction deadlines  
6 shall be extended based on the date that Toshiba's invalidity contentions are due pursuant to the  
7 Patent Local Rules.

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9 DATED this 23rd day of July, 2013.

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13 HONORABLE WILLIAM H. ORRICK  
14 UNITED STATES DISTRICT JUDGE  
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